In The

Supreme Court of the United States

October Term, 1976

No. 76-558

RAYMOND MOTOR TRANSPORTATION, INC.,
A MINNESOTA CORPORATION
AND
CONSOLIDATED FREIGHTWAYS CORPORATION
OF DELAWARE
A DELAWARE CORPORATION

Appellants,

VS.

ZEL S. RICE, ROBERT T. HUBER, JOSEPH SWEDA, REBECCA YOUNG, WAYNE VOLK, LEWIS V. VERSNIK, and BRONSON C. LA FOLLETTE,

Appellees.

On Appeal From The United States District Court
For The Western District of Wisconsin

BRIEF OF THE COMMONWEALTH OF VIRGINIA AS AMICUS CURIAE

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INTERESTS OF AMICUS CURIAE

The Commonwealth of Virginia is vitally concerned with the maintenance of safety upon its highways. Pursuant to its interest in highway safety and use, the Commonwealth has

promulgated a comprehensive design regulating vehicle sizes, weights, equipment, operation, and operator's qualifications. In view of the peculiarly local nature of the problems involved in State highway administration, the Commonwealth emphasizes the need to maintain traditional judicial deference with respect to the States' highway safety regulations.

In addition, the Commonwealth has promulgated vehicle restrictions similar to the Wisconsin regulations whose validity is contested in this case. Thus, Virginia limits the actual length of any combination of vehicles to 55 feet. § 46.1-330, Code of Virginia (1950), as amended. Furthermore, the Commonwealth limits to two the maximum number of vehicles that may be operated in combination. § 46.1-335, Code of Virginia (1950), as amended. Although several exceptions to these general limitations have been created, the 65 foot twin trailers Appellants claim to have a constitutional right to operate in Wisconsin also have been prohibited in Virginia. An invalidation of the Wisconsin regulation would not only place the validity of the Commonwealth's twin trailer prohibition under suspicion but also would threaten the viability of Virginia's entire comprehensive highway regulatory design. Therefore, the Commonwealth urges the need for a reaffirmation of the principle that the subject of highway regulation is a traditional state function within which the States may validly exercise their police powers.

In accordance with Rule 42, of the Rules of the United States Supreme Court, the instant Brief of the Commonwealth of Virginia, *Amicus Curiae,* is filed within the time allowed for the filing of the brief of the parties supported, Appellees.

QUESTIONS PRESENTED

A. Does Wisconsin's refusal to permit twin trailers on its Interstate Highways constitute a regulation for the purpose of safety?

B. Do State regulations of highways continue to constitute matters of peculiar local concern and, if so, are such regulations entitled to a presumption of validity if they are reasonably related to safety?

C. Does Wisconsin's regulatory scheme discriminate against interstate commerce?

D. Does the fact that Wisconsin has permitted certain exceptions to its limitation on the length of trucks on its interstate highways constitute a denial of equal protection of the laws to those who operate twin trailers on highways of other States?

STATEMENT OF THE CASE

The Commonwealth of Virginia adopts the Appellee's statement of the case.

SUMMARY OF ARGUMENT

It is the position of the Commonwealth that the law of the State of Wisconsin restricting the lengths of vehicles on Wisconsin's highways to 55 feet is promulgated to promote that State's legitimate interest in the safety of motorists on its highways. All precedent dictates that regulation of safety on State highways is a matter of peculiar local concern and well within the authority of the legislatures of the respective States. There is no factual or statistical evidence adduced by the appellants, nor can there be, which will support their apparent request that this particular State interest is no longer of peculiar local concern. Further, the

facts which have been adduced seem to direct the appellants' argument toward an attempt to show that the Wisconsin regulation is discriminatory; if this be the case, no new standard of review need be promulgated inasmuch as a State law which discriminates against interstate commerce is invalid under existing precedent.

Inasmuch as safety on State highways is a matter of peculiar local concern, this Court has previously ruled that the regulations in this regard should be struck down only in the event that they bear no rational relation to that permissible State interest. There is no reason why this should not continue to be the standard in measuring such regulations. The appellants' contention that the decision of this Court in *Pike* v. *Bruce Church*[1] establishes a test by which burdens on interstate commerce are to be measured, different from that in *South Carolina* v. *Barnwell*[2], is erroneous. Appellants read the *Pike* decision to require that the validity of a State regulation affecting interstate commerce be evaluated by the Court on the basis of the preponderance of the evidence; this would require the Court to sit as a legislature and analyze all of the varying policy considerations, even in cases where scientific exactitude is not possible. The Commonwealth believes that appellants misread the *Pike* decision and in support of this submit the decision of this Court in *Brotherhood of Loc. F. & E.* v. *Chicago R.I. & Pac. R.R.*[3] in which the Court clearly established that the rational basis test is the proper one in cases involving conflicts between State regulation of safety and the Commerce Clause. The *Pike* decision involved another category of State interest formulated by

[1] 397 U.S. 137 (1970).

[2] 303 U.S. 177 (1938).

[3] 393 U.S. 129 (1968).

this Court in order to properly determine what standard of review it should be subjected to. In this regard, it represents merely another step in the method of review which has evolved since the decision of this Court in *Cooley* v. *Board of Wardens.*[4]

It is clear that the precedent of this Court well establishes the rule that local regulation of size and weight of motor vehicles is directly related to safety and no evidence need be adduced on this point. Without regard to this, the record shows quite clearly that the double-bottomed trailers proposed by the appellants can pose significant safety problems in their operation on highways. Among these problems are: extra time in passing, longer stopping distances, added impact upon collision, and adverse psychological effect upon motorists.

Further, the Commonwealth submits that the State of Wisconsin and all other States have the right to establish categories for the classification of various types of vehicles which might be allowed, by special permit, to exceed the length limitations established by their laws. It has been held that such categories need only be reasonable in order to be compatible with the Equal Protection Clause of the Constitution.

In light of the foregoing, it is submitted that it is within the power of the State to regulate for the safety of its citizens and that the regulations in question are not incompatible with the Commerce and Equal Protection Clauses of the Constitution and should accordingly be upheld.

[4] 53 U.S. (12 How.) 299 (1851).

ARGUMENT

I

Regulation Of Highways Is A Matter Of Peculiarly Local Concern Which Is Properly A Function Of The Individual States.

All States have the inherent authority to legislate in the best interest of the health, safety and welfare of their citizens, *Douglas* v. *Seacoast Products,*[5] and this authority is expressly reserved to the States under the Tenth Amendment of the Constitution.[6] It would seem that, in the absence of an effect on a subject specifically granted to Congress or prohibited to the States, such authority is unlimited. Unfortunately, subjects of exclusive state control are virtually non-existent. Thus, it has become necessary for this Court to formulate axioms and theorems which delineate the boundaries between States' reserved powers and powers granted to Congress when the exercise of each, on their permissible subjects, conflict.[7]

Historically, highways have been constructed, maintained, and regulated by State governments. This fact has been recognized as a legal principle so frequently by this Court as to have become axiomatic. Most prominently it was said:

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[5] 45 U.S.L.W. 4488 (May 23, 1977).

[6] *U.S. Const. Amend X.*

[7] It should be noted that this Court recently expressly held that there are some integral State functions such as employer-employee relationships in areas such as fire prevention, police, etc. which, except in emergencies, are beyond affirmative (and, we assume, negative) federal control through the Commerce Clause. *National League of Cities* v. *Usery,* 426 U.S. 833 (1976). It is not yet clear how a "peculiar local concern" measures against an integral State function on a scale of powers which can withstand Commerce Clause challenges, but, at a minimum, *National League* reemphasizes this Court's belief in federalism and certainly argues against the degradation and devolution of status previously accorded categories of State interest.

> Few subjects of state regulation are so peculiarly of local concern as is the use of state highways. There are few, local regulation of which is so inseparable from a substantial effect on interstate commerce. Unlike the railroads, local highways are built, owned, and maintained by the state or its municipal subdivisions. The state has a primary and immediate concern in their safe and economical administration.[8]
>
> The regulation of highways "is akin to quarantine measures, game laws, and like local regulations of rivers, harbors, piers, and docks, with respect to which the state has exceptional scope for the exercise of its regulatory power, and which, Congress not acting, have been sustained even though they materially interfere with interstate commerce."[9]

It is submitted that State control of the systems of highways in this Nation is proper and appropriate, not only in light of the presently prevailing system whereby the States design, construct, own, and maintain almost exclusively all roads in this Nation, but also in view of the fact that each State has peculiar characteristics which militate toward peculiar and unique local laws which take cognizance of those conditions. A whole catalogue of such conditions could be produced, but the most prominent would seem to be local patterns of traffic use, geographical factors, weather conditions, and the wishes and best judgment of the citizens of the domain through which each highway must pass.

It is further submitted that the construction, maintenance, and operation of highways is, as the State functions enum-

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[8] *South Carolina State Highway Department* v. *Barnwell Bros., Inc.,* 303 U.S. 177, 187 (1938).

[9] *Bibb* v. *Navajo Freight Lines, Inc.,* 359 U.S. 520, 523-24 (1959), *quoting Southern Pacific* v. *Arizona,* 325 U.S. 761, 783 (1945).

erated above, so closely bound practically, historically, and legally in the operations of State governments as to be a traditional State function mandated by a compelling State interest.

On many occasions this Court has been called upon to assess the nature of the State highway function, and all precedent dictates the essential and compelling State character of highways:

> In the absence of national legislation especially covering the subject of interstate commerce, the State may rightly prescribe uniform regulations adapted to promote safety upon its highways and the conservation of their use, applicable alike to vehicles moving in interstate commerce and those of its own citizens.[10]
>
> Regulation of vehicular traffic over the highways of the United States involves a far more varied and complex undertaking. The highways of the country have been built by the states with substantial financial aid from the federal government in the construction of some of them. They are state owned, and, in general, are open in each state to use by privately owned and controlled motor vehicles of widely different character as respects weight, size, and equipment. The width, grades, curves, weight-bearing capacity, surfacing and overhead obstructions of the highways differ widely in the forty-eight different states and in different sections of each state. There are like variations with respect to congestion of traffic. State regulation, developed over a period of years, has been directed to the safe and convenient use of the highways and their conservation with reference to varying local needs and conditions.[11]
>
> Unlike the railroads local highways are built, owned and maintained by the state or its municipal subdivisions. The state is responsible for their safe and economical administration. Regulations affecting the safety of their use must be applied alike to intrastate and interstate traffic. The fact that they affect alike shippers in interstate and intrastate commerce in great numbers, within as well as without the state, is a safeguard against regulatory abuses.[12]
>
> The power of the State to regulate the use of its highways is broad and pervasive. We have recognized the peculiarly local nature of this subject of safety, and have upheld state statutes applicable alike to interstate and intrastate commerce, despite the fact that they may have an impact on interstate commerce.[13]

[10] *Morris* v. *Duby*, 274 U.S. 135, 143 (1927).

[11] *Maurer* v. *Hamilton*, 309 U.S. 598, 604-05 (1940) (footnotes omitted).

That highways are a local and State function exclusively is implicitly recognized by the terms of the Federal Aid-Highway Act, Title 23 U.S.C., which is based, not upon a Federal assertion of control over highways, but upon the principle of grants-in-aid by which the Federal government, through the operation of the general welfare clause of the Constitution, aids the States through expenditure of Federal monies in the performance of the State function. Although, certainly, the expenditure of Federal monies is conditioned upon the performance of certain standards, there is no attempt in any Act of Congress to direct the States to unconditionally perform any act in the construction, maintenance, or operation of its highways. It is submitted that this axiom is the touchstone from which all analysis of State regulation of the length of motor vehicles must commence.

Any challenge to a State's regulation must begin from this basic premise to either ask that this precedent be overruled or find a legally recognized exception. In this regard, it would seem that appellants have adopted an ambivalent

[12] *Southern Pacific* v. *Arizona*, 325 U.S. 761, 783 (1945).

[13] *Bibb* v. *Navajo Freight Lines, Inc.*, 359 U.S. at 523 (1959).

and inconsistent approach inasmuch as, on page 44 of their brief, they state that they "do not seek a holding that the general limitation of vehicle length is invalid," but a major portion of their brief is devoted to arguments that the well established status of local highway safety regulation is no longer appropriate. Were the appellants to prove that the Wisconsin regulatory design favors intrastate over interstate traffic, then such design would, under existing precedent, be offensive to the Commerce Clause. In that case there would be no reason to urge the promulgation of a new standard and the Commonwealth of Virginia would have no compelling interest in the outcome of this case. Although the Commonwealth believes that the District Court was correct in finding that Wisconsin's design does not discriminate in favor of intrastate commerce, she would not be concerned were the appellants to challenge that design solely on the basis that it was discriminatory. This, however, does not appear to be the case; despite assertions to the contrary, appellants argue that the *Barnwell* standard and its corollaries are outdated and that the regulation of highways is no longer a traditional State function with the presumptions of validity formerly attendant thereto. In essence, therefore, the appellant's threshold request is that the *Barnwell, Southern Pacific,* and *Bibb* decisions of this Court be overruled.

In support of this contention it has been submitted that, in 1977, motor carriers form a National system of commerce[14] and that the *Barnwell* statement of peculiar local concern in highway regulation, having been appropriate in 1938, is no longer appropriate in light of a "fundamental change" which is manifest.[15]

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[14] Brief for appellants at 26.

[15] Brief for appellants at 46.

As primary evidence of this fundamental change, the advent of the Interstate System of Highways is adduced. The only additional support for this proposition is found in government figures showing ton-mile figures for 1938 as compared to 1974 and certain figures relating to the percentage of certain commodity groupings which were carried by for hire motor carriers in 1972.[16] Neither of these points support a contention of a fundamental alteration of the power and duties of States with respect to highways.

The Interstate Highway System is constructed by the States, with Federal monetary aid, under the provisions of the Federal-Aid Highway Act, Title 23, U.S.C. Each State is entitled to apply for and receive the funds available for this and other systems upon agreement to accept the statutorily established conditions upon the use of such aid. The provisions of this Act are, quite clearly, predicated upon the voluntary nature of a State's participation in its programs. Congress, in promulgating the statutory conditions to the acceptance of Federal aid, is able to, and has, provided for the attainment of standards and a concomitant degree of uniformity among various States which it deems acceptable. This has been accomplished, not by Federal mandate, but by financial inducement and local iniatives. This was as true of the federally funded highways in South Carolina in 1938 as it is today. While it may be true that Federal aid comprises a greater portion of a State's construction budget today than in 1938, and while it may be

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[16] The statistics adduced by appellants show a 12-fold increase in ton-mile motor carriage between 1938 and 1974; no attempt is made to compare this to the increase in all forms of transport. In any event, these figures have no relevance to the issues of whether a highway is properly controlled by the State, such issues having been previously decided not on the basis of volume but on the basis of compelling local interest.

true that there has been a commensurate inflation in the number of federal conditions upon the acceptance of such aid, it is submitted that there has been no alteration in the basic Federal-State or State-to-State relationships with respect to highways since 1938. This is true inasmuch as the responsibility for the initiation and implementation of highway programs still lies with each individual State. Appellant has cavalierly postulated to the contrary, but has adduced absolutely no evidence in support.

The Interstate System, as it exists today, is neither constructed, maintained, owned or operated by the Federal Government.[17] Congress has specifically recognized the local characteristics of these highways in 23 U.S.C. § 145 which provides that "[t]he provisions of this chapter [23 U.S.C. § 101-56] provide for a federally assisted *State program*."[18]

[17] 23 U.S.C. § 114, 116.

[18] (Emphasis added). A review of the facts in *Morris* v. *Duby*, 274 U.S. 135 (1927), indicates that, in fact, federal aid provisions in effect in 1921 with respect to rural post roads were the same as those now in effect with respect to Interstate Highways, at least insofar as a State's control of its highways is concerned. In *Morris* the Federal-State relation was outlined:

> The Secretary of Agriculture, by virtue of three Acts of Congress, one of July 11, 1916, c. 241, 39 Stat. 355, an amendment thereto of February 28, 1919, c. 69, 40 Stat. 1189, 1200, and the Federal Highway Act of November 9, 1921, c. 119, 42 Stat. 212, is authorized to cooperate with the States, through their respective highway departments, in the construction of rural post roads. These require that no money appropriated under their provisions shall be expended in any State until it shall by its legislature have assented to the provisions of the Acts. They provide that the Secretary of Agriculture and the State highway department of each State shall agree upon the roads to be constructed therein and the character and method of their construction. The construction work in each State is to be done in accordance with its laws, and under the supervision of the state highway department, subject to the inspection and approval of the Secretary and in accord with his rules and regulations made pursuant to the federal acts. The States are required to maintain the roads so constructed according to their laws.

Id. at 140.

It is agreed that the highways of all of the States have dramatically improved since the *Barnwell* decision. A great deal of such improvement results from the creation of the Interstate System; no doubt facility of vehicular travel has shown a commensurate improvement. Appellants seem to imply that this development argues the conclusion that a minority of States now must abide by the judgment of the majority where safety regulations are at issue.

The Commonwealth takes strong issue with this inference. It is the nadir of illogic to assume that because the States have, through individual and cooperative efforts, improved the lot of the travelling public, including motor carriers, by upgrading the highways within their borders, they should be deemed to have lessened their individual interests in the regulation of their own highways. In short, appellants would lessen the State interest as a direct result of State actions intended to achieve the salutary result of freer travel. All highways, including Interstates, continue to be owned and maintained by the States; the citizens of each State have a vital interest in their proper maintenance and control. Accordingly, the Commonwealth respectfully submits that the advent of the Interstate System of Highways and the sketchy statistics shown by the appellants do not support a change in this Court's longstanding approach to the constitutional status of State highways.

To make such a change would cast doubt upon the authority of States to regulate any aspect of highways as well as all other categories of State interest previously established by this Court.

II

Wisconsin's Laws And Regulations Do Not Discriminate Against Interstate Commerce To The Benefit Of Intrastate Commerce.

Appellants have alleged that the Wisconsin law banning twin trailers and limiting semi-trailers to 55 feet in length, with its exceptions, discriminates against interstate commerce to the benefit of intrastate commerce. Ostensibly, this allegation is based upon the fact that the categories of commerce which are given limited exceptions under the law involve commodities and businesses which represent a portion of Wisconsin's economy that is proportionately higher than the rest of the nation.

It is recognized that regulations cannot discriminate against interstate commerce under the guise of safety rules and that all highway laws must apply equally to vehicles in intrastate and interstate commerce.[19] Initially, it is manifest that the Wisconsin regulations apply their exceptions equally to both interstate and intrastate commerce. Appellants, however, adduce statistics which show that six categories of exceptions constitute 32.78% of Wisconsin manufacturing shipments while the same items constitute only 18% of all manufacturing shipments in the nation.[20] Thus they allege that these exceptions are tailored to Wisconsin's industry and constitute a "subtle discriminatory pattern."[21]

The Commonwealth agrees with the State of Wisconsin that these exceptions do not discriminate and, therefore, do not offend either the Equal Protection Clause of the Constitution or the Commerce Clause. It is submitted that, although exceptions have been granted, they have been

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[19] *Bibb* v. *Navajo Freight Lines, Inc.*, 359 U.S. at 523.

[20] Brief for appellants at 22.

[21] *Id.* at 23.

very carefully circumscribed through limitation of categories and restricting the conditions of use in order to continue the overall effect of safety produced by the 55 foot general standard.

In addition, the Commonwealth believes that the appellants are incorrect in asserting that the differential between the national production figures and the Wisconsin production figures sustantiates the claim of discrimination. Initially, the figures submitted are limited at best and do not take into consideration the wide range of commodity figures in different groupings of States surrounding Wisconsin, nor do they consider other factors which might have been relevant to the establishment of exceptions to the 55 foot restriction. Even if the figures do present a correct picture of the relevant commerce factors, it is submitted that an absolute mathematical congruence between the statistics of the Nation and those of Wisconsin is not necessary and, in any event, is irrelevant because competition within the excepted categories is not impaired.

The leading case on discrimination in interstate commerce is the decision of this Court in *Buck* v. *Kuykendall*.[22] In that case the State of Washington had denied a citizen of Oregon a certificate of convenience and necessity to use Washington's highways on the route between Portland and Seattle in his interstate commerce carrier business; Washington officials justified denial on the ground that the territory was adequately served by carriers already authorized. The Court stated:

> Its [the statute's] primary purpose is not regulation with a view to safety or to conservation of the highways, but the prohibition of competition. It determines not the manner of use, but the persons by whom the highways may be used. It prohibits such use to some persons

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[22] 267 U.S. 307 (1925).

while permitting it to others for the same purpose and in the same manner.[23]

The Commonwealth submits that the appellants must meet the standard of showing that the regulation is not reasonably related to safety and that its purpose is to keep interstate traffic off of Wisconsin's highways. The Commonwealth further contends that this showing is impossible inasmuch as the restriction on twin trailers is the subject of this challenge and that restriction is applied to interstate and intrastate commerce evenhandedly. The fact that exceptions are given on the basis of particular commodity categories has no real bearing on the validity of the general restriction, particularly as it relates to appellants. Twin trailers are capable of transporting a wide range of commodities which generally do not affect the excepted commodities; this range is so wide as to make it impossible to say that exclusion of twin trailers reflects a discrimination against any aspect of interstate commerce. It should be pointed out that no goods or commodities are excluded from Wisconsin's highways; only the method of conveying them is somewhat restricted by Wisconsin's legislation in the subject area of one of its most immediate concerns, safety.

III

Non-Discriminatory State Regulation Of Traffic On State Highways Is Constitutionally Permissible So Long As Such Regulation Is Reasonably Related To Highway Safety.

It has been demonstrated in Argument One that the regulation of all State highways continues to enjoy, in a constitutional sense, the status of a maximum State interest and should be entitled, accordingly, to be measured under the

[23] *Id.* at 315.

standards previously applied in such cases. Such measurement is, of course, necessary to determine at what point a State regulation creates such a burden upon interstate commerce as to offend the Commerce Clause.[24] In *Barnwell* this Court reiterated that, in the absence of Federal regulation on the subject, the scope of its inquiry stopped after determining "whether the state Legislature in adopting regulations . . . has acted within its province, and whether the means of regulation chosen are reasonably adapted to the end sought."[25] The questioned regulations in *Barnwell* were intended to provide for the safety of travelers on South Carolina's highways by imposing certain vehicular width and weight limitations deemed appropriate by the South Carolina Legislature. Previously, the Court had ruled in *Duby*, that the exclusion of unnecessary vehicles, "particularly the large ones commonly used by carriers for hire—promotes both safety and economy. State regulation of that character is valid even as applied to interstate commerce, in the absence of legislation by Congress which deals specifically with the subject."[26] Thus, the Court in *Barnwell* was asked to evaluate a State legislative policy decision as to the proper balance between, on one hand, the economic interests of carriers for hire and, on the other, the very sensitive concern for the safety of its citizens and the maintenance of its highways. The factual finding of the trial court, not challenged on appeal, was "that there is a large amount of motortruck traffic passing interstate in the southeastern part of the United States, which would normally pass over the highways of South Carolina, but which will be barred from the state by the challenged

[24] U.S. Const. art. 1, § 8, cl. 3.

[25] 303 U.S. at 190; *accord, Sproles* v. *Binford,* 286 U.S. 374 (1932); *Stephens* v. *Binford,* 287 U.S. 251 (1933).

[26] 274 U.S. at 144.

restrictions if enforced . . . ."[27] The Court determined that this, indeed, was a very heavy burden on commerce, both intrastate and interstate, but that the law was reasonably designed to promote the State's interest in safety on its highways. Although there was an evidentiary showing that the shorter length enhanced safety, the Court was, no doubt, primarily influenced by its earlier holdings that such questions were not susceptible to resolution with scientific precision and that they should be resolved legislatively, where the will of the people most directly effected could be implemented.

> Limitations of size and weight are manifestly subjects within the broad range of legislative discretion. To make scientific precision a criterion of constitutional power would be to subject the state to an intolerable supervision hostile to the basic principles of our government and wholly beyond the protection which the general clause of the Fourteenth Amendment was intended to secure. . . . (citations omitted). When the subject lies within the police power of the state, debatable questions as to reasonableness are not for the courts but for the Legislature, which is entitled to form its own judgment, and its action within its range of discretion cannot be set aside because compliance is burdensome.[28]

Decisions as to the necessity of safety provisions to the detriment of cargo capacity are clearly not susceptible to an objective, scientific determination which is clearly correct in the eyes of all affected parties; competing interests will, almost always, disagree, and the resulting legislation will, almost always, compromise those interests. Thus the Court said that unless such compromise was not reasonably related to the state interest, the Court would not disturb it. This is proper since no court is equipped or empowered to enter-

[27] 303 U.S. at 182.

[28] *Sproles* v. *Binford,* 286 U.S. at 388-89.

tain, evaluate, and decide questions of policy which such issues inevitably represent.

In all subsequent cases, this Court has expressly reiterated the *Barnwell* deference to State legislative determinations in the field of safety.[29] In *Southern Pacific* this Court held that a local regulation of the length of the interstate trains was an impermissible exercise of the local police powers over free flow of commerce. This decision turned on the finding that the regulation of railroads is a category of lesser State interest than the regulation of highways, even as to the subject of safety. Thus, even though the State-imposed burden on commerce in *Southern Pacific* may not have been as great as the State-imposed burden in *Barnwell,* the Court reasoned that the lesser State interest justified a stricter test in evaluating the State regulation. This is not unreasonable. In addition to many manifest distinctions, it is crucial to note that railroads are generally neither constructed nor operated by States. They are not open to the random, independent use of the general citizenry as are highways to motorists; thus, safety factors with respect to trains are easier to evaluate, and there is no random mix of vehicles on rails, other than the regulated trains, which need be protected from the trains. Thus, the Court quite rationally and correctly ruled that the railroads represent an entirely different category of State interest and that safety standards thereon should be subject to a different test when in conflict with the free flow of interstate commerce. Accordingly, the holding in *Southern Pacific* is not inconsistent with *Barnwell* nor with Wisconsin's position in this case.

In *Bibb* v. *Navajo Freight Lines, Inc.,*[30] this Court invali-

[29] *See, e.g.,* Maurer v. Hamilton, 309 U.S. 598 (1940); *Southern Pacific* v. *Arizona,* 325 U.S. 761 (1945); *Bibb* v. *Navajo Freight Lines, Inc.,* 359 U.S. 520 (1959).

[30] 359 U.S. 520 (1959).

dated a State vehicle regulation on the basis that it impinged too greatly upon the free flow of interstate commerce guaranteed by the Commerce Clause. At the outset, it should be noted that *Bibb* expressly reaffirmed the *Barnwell* doctrine that regulation of highways in the interest of safety is a peculiar and compelling State function and that, even though burdensome, such regulation need only be reasonably adapted to serve that purpose in order to pass constitutional muster.[31] Since *Bibb* is the only decision of this Court which has declared a highway safety regulation an undue burden on interstate commerce, a review of the pertinent facts is imperative.

The Illinois statute in question had repealed a law which had required trucks and trailers to be equipped with conventional (straight) mudguards and required, instead, that they be equipped with a unique type of contour mudguards. The conventional mudguards continued to be legally required in at least forty-five of the other forty-eight States; the State of Arkansas actually prohibited use of the contour mudguard. The two types of mudguards were not easily interchangeable. Thus, Illinois was effectively requiring that all motor carriers which intended to operate in Illinois convert to the contour type. There was evidence which quite distinctly controverted the conclusion that the contour mudguards enhanced safety. In fact, some evidence showed that the contour guards created additional hazards.

It is important to note that the issue before the Court was whether the contour mudguard, in a comparative analysis to the straight mudguard, bore a reasonable relationship to the safety of the travelling public, not whether mudguards should be required at all.

Thus, the Court was faced with an issue which, although concerning safety, was not so much a policy decision as in

[31] *Id.* at 523-24.

Barnwell, but a technical decision much more susceptible to exact and scientific analysis. The only economic factor to be considered by the Illinois legislature was the one-time installation cost of the contour guards for the Illinois-based carriers; this differed from the much more difficult legislative balancing in *Barnwell* of a continuing reduction in cargo capacity with safety considerations. The safety portion of the Illinois legislature's decision was one which could easily be proved right or wrong by comparative tests. On the other hand, the economic factor would be small in the minds of the Illinois legislature, but large in the minds of the Court which had to consider, not a one-time cost, but the far greater cost to interstate traffic of continual adaptation to the Illinois law. It is important that, in *Bibb, no* interstate traffic could travel without contour guards, an almost confiscatory result, while, in *Barnwell* and in this case, the impairment of interstate traffic is only in degree. As has been held, that sort of degree is directly proportional to an enhancement in highway safety.

The Commonwealth submits that the test which this Court has consistently applied in the instance of State regulations of traffic on highways for safety purposes is consistent with the approach it has applied in all other cases where State prerogatives burden commerce. *Cooley* v. *Board of Wardens,*[32] established the basic concept by which local regulations effecting interstate commerce would be categorized in subject groups weighed according to the State interest involved, and then, evaluated in terms of their effect on interstate commerce. Since *Cooley* the Court has refined this method and held that the standard of review could be established only after the particular subject of State interest was weighed against the interests of interstate commerce. The re-

[32] 53 U.S. (12 How.) 299 (1851).

sults of this balancing would then determine the degree of scrutiny and the difficulty of the test to which a challenged regulation would be subjected. Since that time, the Court has been called upon to examine many different types of local burdens upon interstate commerce and has attempted to delineate and compare the magnitude of the local interest as weighed against the national interest in the free flow of interstate commerce. The Commonwealth contends that the highway decisions previously enumerated embody this Court's current position in categorizing and evaluating the nature of the local interest in all areas, including safety on public highways. While new categories of State interest continue to be established, they do not implicitly change the status already accorded other categories; they represent merely a continuation of the trend begun in *Cooley*. It was through this method that highway safety was accorded the status of a compelling State interest, thus entitling State regulations in that regard to be measured by the rational basis test.

In essence, the appellants have contended that the recent decision of this Court in *Pike* v. *Bruce Church,*[33] has overruled, or represents a departure from, the method established in *Cooley* and followed through *Barnwell* and other decisions. The Commonwealth submits that this is not the case, and that, in fact, *Pike* is perfectly consistent with the *Cooley* method. The *Pike* regulation was designed to protect the reputation of the State of Arizona as a cantaloupe producing State. The Court found that the requirement that cantaloupes be packaged and labeled in Arizona, rather than in California as proposed by the grower, was a burden on interstate commerce. It reiterated the rule that a nondiscrimina-

[33] 397 U.S. 137 (1970).

[34] *Id.* at 142.

tory statute will be upheld "unless the burden imposed on such commerce is clearly excessive in relation to the putative local benefits. *Huron Cement Co.* v. *Detroit,* 362 U.S. 440, 443."[34] In *Pike,* the Court found that the protection of Arizona's reputation as a cantaloupe producing State was a goal of minimal state interest.[35] It further established that "the extent of the burden that will be tolerated will of course depend on the nature of the local interest involved, and on whether it could be promoted as well with a lesser impact on interstate activities."[36] Inasmuch as the interest of the State in the *Pike* case was minimal, it is natural that only a small permissable degree of burden was allowed. In *Pike,* the Court found that an enormous burden was being placed on the grower to protect only a minimal State interest and, thus, that the regulation was an unreasonable and unwarranted interference with interstate commerce. It is submitted that *Pike* is apposite only insofar as it demonstrates the *Cooley* method.

Thus, it would seem that *Pike* represents one of the more recent cases in a long and consistent line established by this Court, beginning with *Cooley,* which have attempted to establish a reciprocal ratio between, on one hand, the nature of the regulated State interest and, on the other, the difficulty of the test to be applied to the regulation designed to support that interest. We contend that the appellant is in error in assuming that the *Pike* standard postulates a pure balancing test in all cases without regard to precedentally established categories of State interest.

This proposal completely disregards the subjects of "peculiar state concern" which the Court has held are best evaluated by the legislatures which are constitutionally mandated

[35] *Id.* at 146.

[36] *Id.* at 142.

to make policy decisions by balancing competing interests. Apparently, the appellants would thus discard the "rational basis" test which has always been a corollary to the status of the peculiar State concern. To adopt this approach would resurrect the evils disavowed in *Sproles,* where the Court refused to sit as a "super legislature" in judgment of legislative policy decisions.

That this Court has no intention of doing this is illustrated by its decision in *Brotherhood of Loc. F. & E.* v. *Chicago, R.I. & Pac. R.R.*[37] In that case a challenge to an Arkansas railroad safety measure, the "full crew" law, was rejected. The law was challenged on the basis that certain crew members, originally required expressly for safety purposes, were no longer necessary for those purposes; thus it was argued that the law's burden on interstate commerce was constitutionally unjustifiable. The Court reiterated that that decision was not to be made on the basis of the preponderance of the evidence, but that, within the range of state interest previously accorded safety on railroads, the decision of the legislature was entitled to be judged by the rational basis test.[38] Safety as an area of important State interest, even to the detriment of interstate commerce, was upheld specifically and convincingly.

In light of the foregoing, the Commonwealth submits that the proper test for the evaluation of the Wisconsin statute is that of whether it bears a reasonable relationship to highway safety. This Court has previously dealt with cases involving almost identical issues, and size restrictions on motor vehicles have been consistently held to be directly related to the peculiar State interest in highway safety. This Court has repeat-

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[37] 393 U.S. 1045 (1968).

[38] *Id.* at 138, 42.

edly stated that such laws will be upheld if they bear a rational relation to safety. The only tangible detriment adduced by the appellants is the inconvenience, and resulting cost, caused by the Wisconsin law; this Court has consistently held that such extra cost will not be sufficient to overweigh the putative local benefits of such regulations.[39]

Accordingly, it is submitted that applicable precedent dictates the application of the "rational basis" test in this case and the consequent affirmation of the lower Court's decision.

IV

The Twin Trailer Restriction Is Premised On Sound Principles.

A. *Safety*

The prohibition in question is based on sound safety principles. Not only has the Wisconsin Legislature and Highway Commission deemed the prohibition to be necessary, but the three judges of the District Court found that appellants had not presented sufficient evidence to demonstrate that the statutes and regulations in question were not adapted to permissible safety goals.[40] To the contrary, the Court, acknowledges the problem of visual impairment created from the additional length of twin trailers.[41] Due to the longer length, drivers of passing vehicles are subject to an additional obstruction of their vision. As the difference between the speeds of the passing vehicles and the twin trailers narrows,

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[39] *See, e.g., Id.* at 140, *quoting Bibb* v. *Navajo Freight Lines, Inc.,* 359 U.S. at 526.

[40] *Raymond Motor Transp. Inc.* v. *Rice,* 417 F.Supp. 1352, 1359 (W.D. Wis. 1976).

[41] *Id.*

the time of this impairment can be measurably increased. Moreover, the additional visual impairment may be extreme under adverse weather or traffic conditions. Having presented these specifics the Court then states:

> This Court cannot conclude that prevention of added visual impairment or other similar safety considerations were not within the collective mind of the legislature and administrative bodies responsible for these regulations. Because such factors are indeed legitimate safety concerns, the Court must determine that the proscriptions in question do serve to implement various safety goals.[42]

The lower court's specific reference to the various effects of visual impairment is not the only evidence in the record concerning questions of safety. For example, the weight of a vehicle has a direct bearing upon the severity of its impact potential in an accident.[43] Appellants readily admit that the reason they seek the abolishment of the twin trailer prohibition is so they can utilize such trailers to carry as much as one-third more goods and commodities on each trip. This request for larger trucks is especially distressing at a time when the nation is rapidly purchasing and driving smaller, more economical automobiles.

It is submitted also that the psychological impact of these trucks upon the average motorist is also a matter for legislative consideration. Because of their size, the twin trailer can intimidate and create a fear in the motorist. Such an intimidation can result in a motorist overreacting to emergencies or creating traffic congestion and its attendant hazards because of his uncertainity in approaching or passing such vehicles.

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[42] *Id.*

[43] (A. 146-47, 50-51).

The appellants argue that the jackknife potential is less, but they do not acknowledge that if a twin trailer does jackknife, its hazard potential is greater than that of a semi-trailer because of the larger area it will cover in such a mishap. The appellants further argue that the twin trailer's braking capacity is as good as a semi-trailer's but there is no evidence to reflect what weights the two types of trucks were carrying during the tests which appellants argue support their position. It is difficult to understand how a twin trailer carrying its average load is capable of being stopped as fast as a semi-trailer carrying its average load. The one-third additional weight in the twin trailer has to dictate a longer stopping distance.[44] Finally, the appellants argue that the splash and spray caused by the twin trailer is not as dense as that caused by the semi-trailer. It is submitted, however, that even if this is true, the motorist will be subjected to the splash and spray for a longer period of time when passing.

B. *Balancing Transportation Modes*

Appellants argue that because of the added volume of twin trailers, fewer vehicles will be required, resulting in a lessening of highway congestion and a significant fuel savings. It is possible that the Wisconsin Legislature does not agree with this theory and believes that because of the allegation concerning the twin trailers' more efficient operations and carrying capacity, truck transportation could take trade away from other modes of transportation, thereby, increasing road use. Wisconsin has a legitimate interest in "fostering a fair distribution of traffic to the end that all necessary facilities should be maintained and that the public should not

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[44] (A. 126).

be inconvenienced by inordinate uses of its highways for purposes of gain." [45]

C. *Wisconsin's Decision is Supported by Other States.*

The State of Wisconsin is not alone in its decision to prohibit twin trailers. Twelve other States and the District of Columbia prohibit such trailers; three additional ones prohibit twin trailers over 60 feet; and one State limits the length of all trailers to 60 feet.[46] The Commonwealth submits that the legislative decisions of seventeen States and the District of Columbia to prohibit 65 foot twin trailers cannot be easily disregarded. These governments are not yet convinced that it is in their citizens' best interests to be subjected to such a mode of transport. Whether they will change their positions in the future cannot now be predicted, but the Commonwealth asks that this Court refrain from displacing the legislative determinations of these bodies. If these policies are to be modified, let them be changed by the legislatures of the individual States and not by the courts acting in a legislative capacity.

V

There Is No Denial Of Equal Protection.

Although it is not express, appellants may contend that the Wisconsin twin trailer prohibition violates the Equal Protection Clause because exemptions to the State's general vehicle restrictions are authorized to permit the limited operation of certain oversized vehicles other than twin trailers. They also imply that the prohibition of twin trailers is unconstitutional because the evidence indicates that the

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[45] *Sproles* v. *Binford,* 286 U.S. at 394.

[46] (A. 278).

operation of 65 foot long three-vehicle combinations is as safe as that of 55 foot semi-trailers. Thus, appellants complain that the Wisconsin law creates a classification which is both overbroad and underinclusive with respect to the problem of highway safety.

A. *Categorizing Classes And Providing Them Different Treatment Does Not Necessarily Violate The Equal Protection Clause.*

In speaking of vehicle regulations, this Court has stated: "There is no constitutional requirement that regulation must reach every class to which it might be applied—that the legislature must regulate all or none. *Silver* v. *Silver,* 280 U.S. 117, 123. The state is not bound to cover the whole field of possible abuses." [47] In *Sproles,* this Court upheld a weight restriction that differentiated between passenger busses and other types of vehicles even though a load of persons could damage the highways just as much as an equally heavy load of freight. Similarly, in *Railway Express Agency, Inc.* v. *New York,*[48] this Court held that although New York City saw fit to eliminate from traffic a certain kind of distraction but did not prohibit what "may be even greater ones in a different category, such as the vivid displays on Times Square, is immaterial. It is no requirement of equal protection that all evils of the same genus be eradicated or none at all."

Thus, it is clear that the legislature may categorize classes of vehicles differently, providing there exists some reasonable basis for distinguishing between the classes.

In the case at hand, the Wisconsin State Legislature has created limited exceptions to its general vehicle restrictions in an obvious effort to allow an increased use of the State's

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[47] *Sproles* v. *Binford,* 286 U.S. at 396.

[48] 336 U.S. 106, 110 (1949).

highways. Twin trailers, however, have not been excluded in an unreasonable manner from any of these preferred categories. Consequently, the Wisconsin twin trailer prohibition does not deny appellants equal protection of the laws.

Wisconsin's general vehicle restrictions impose limitations for length at fifty-five feet,[49] for width at eight feet,[50] for height at thirteen and one-half feet,[51] for weight at 73,000 pounds,[52] and for the number of vehicles in combination at two vehicles.[53] Exceptions are created in those cases where, but for the relaxed restrictions, the vehicles or the loads in question might be completely excluded from the State. For example, the restrictions have been relaxed to permit the transport of oversized mobile homes,[54] overlength poles, pipes, and automobile carriers,[55] oversized implements of husbandry,[56] and other vehicles or loads "which cannot reasonably be divided or reduced to comply with statutory size, weight or load limitations . . . ."[57] These exceptions, in that they permit the operation of vehicles or transportation of loads upon the State's highways which could not otherwise comply with Wisconsin's vehicle restrictions, are manifestly reasonable. The rationale in *Sproles* is equally applicable to this case:

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[49] Wis. Stat. § 348.07(1) (1975).

[50] *Id.* § 348.05(1).

[51] *Id.* § 348.06(1).

[52] *Id.* § 348.15(3) (d).

[53] *Id.* § 348.08(1).

[54] *Id.* § § 348.07(2)(d), 348.26(4), 348.27(7).

[55] *Id.* § 348.27(5).

[56] *Id.* § § 348.06(2) (a), 348.07(2) (e).

[57] *Id.* § 348.25(4).

> We think that the exception, in the light of the context and of its apparent purpose, instead of being arbitrary relieves the limitation of an application which otherwise might itself be considered to be unreasonable with respect to the exceptional movements described.[58]

Wisconsin's other exceptions are coterminus with the legislative power which was, likewise, recognized by this Court in *Sproles*:

> [T]he Legislature in making its classifications was entitled to consider frequency and character of use and to adapt its regulations to the classes of operations, which by reason of their extensive as well as constant use of the highways brought about the conditions making the regulations necessary.[59]

Accordingly, Wisconsin law permits such operations as overwide vehicles loaded with either bales of hay, tie logs, tie slabs, or veneer logs,[60] oversized vehicles driven in interplant operations,[61] overweight vehicles transporting certain forest products during the winter months,[62] and overweight vehicles carrying milk or fuel during periods of energy emergencies.[63] A review of these exceptions indicate that they have three important characteristics. First, the vehicles can be operated only temporarily or infrequently upon the highway. Second, even though highway use may not be infrequent, the average haul tends to be for relatively short distances. For example, an industrial inter-

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[58] 286 U.S. at 392.

[59] *Id.* at 394.

[60] Wis. Stat. § § 348.05(2) (k)-(*l*) (1975).

[61] *Id.* § 348.27(4).

[62] *Id.* § 348.175.

[63] *Id.* § 348.27(8).

plant permit was issued to American Motors to carry car bodies in trucks for a distance of forty-five miles.[64] Finally, the vehicle restrictions may be relaxed in certain circumstances when peculiar conditions may make the operation of an oversized vehicle more appropriate.

Although Wisconsin has created exceptions to its general vehicle restrictions, it also has recognized that the permission to operate oversized vehicles upon the State's highways will create additional safety hazards. As a result, the State has placed strict limitations upon the manner in which such vehicles will be allowed to use the highways. First, the exceptions based on character of highway use have been formulated so that the permitted vehicles will fall into one of the three categories discussed above. Because the operations of the vehicles in these classes generally are infrequent, temporary, or for short distances, the authorization of these types of vehicles uses naturally creates fewer safety hazards than would a much broader authorization. In addition, the legislature has created specific restrictions germane to many excepted categories. For example, overwidth loads of tie logs, tie slabs and veneer logs may not be transported upon Interstate Highways, may only be carried in single and tandem axle trucks, and "no part of the load shall extend more than 6 inches beyond the fender line on the left side of the vehicle or extend more than 10 inches beyond the fender line on the right side of the vehicle."[65] Overlength mobile homes may be transported only during certain hours of the day, and they cannot be hauled at all on weekends and holidays.[66] The legislature

[64] *Brief for appellants* at 19-20.

[65] Wis. Stat. § 348.05(2) (k) (1975).

[66] *Id.* § § 348.07(2) (d), 348.26(4), 349.27(7).

also empowers the permit authorities to impose such reasonable conditions to the granting of any permit as they deem necessary to promote safety upon the highways.[67] Thus, it is clear that the Wisconsin State Legislature did not create any exceptions to its general safety rules until it had developed a design which minimized highway safety hazards resulting from each exempted category.

Twin trailers were not arbitrarily excluded from any of the classes of vehicles granted exemptions. It is clear that they do not fall within the class of vehicles or loads which cannot reasonably be divided. A 65 foot twin trailer combination easily can be divided into two trailers, either of which can be pulled through or within the State. Also the logical and reasonable alternative to the twin trailers is the 55 foot semi-trailer which can, quite efficiently, carry conventional cargo on Wisconsin's highways.

Twin trailers cannot be justified, as can the other exemptions, on the basis that their use will be restricted. Appellants are not asking that they be authorized to operate the vehicles infrequently or temporarily; nor do they ask that they be permitted to transport twin trailers over relatively short distances or only during certain weather or emergency conditions. At a minimum, what the appellants request is an absolute and unhampered grant to transport their trailers upon the Interstate Highways and connecting roads throughout the State.[68] Such a broad grant of authority would exceed the scope of permission by which, as outlined above, the State Legislature has permitted the operation of other oversized vehicles. Moreover, an authorization to transport twin trailers upon Wisconsin's Interstate Highways would create an exemption to the State's general vehicle restric-

[67] *Id.* § 348.25(3).

[68] *Brief for appellants* at 45, 53.

tions which the legislature has not yet been convinced will be in the best interests of safety.

B. *The Fact That 65 Foot Twin Trailers May Be Nearly As Safe As 55 Foot Semi-Trailers Does Not Make This Prohibition A Violation Of Equal Protection.*

It is no violation of equal protection to prohibit the operation of twin trailers in Wisconsin even if there is evidence to indicate that 65 foot twin trailer combination vehicles can be operated nearly as safely as 55 foot semi-trailers. Obviously, some limit of length and number of vehicles in a combination must be enforced in Wisconsin, but the best length or vehicle combination is a debatable question. Appellants contend, however, that the State Legislature erred when, in promulgating its general vehicle restrictions, it limited combinations to two vehicles and established a maximum vehicle length of 55 feet. This Court has recognized, however:

> Limitations of size and weight are manifestly subjects within the broad range of legislative discretion. To make scientific precision a criterion of constitutional power would be to subject the state to an intolerable supervision hostile to the basic principles of our government and wholly beyond the protection which the general clause of the Fourteenth Amendment was intended to secure.[69]

This Court has often held that a regulatory statute is not invalid merely because it proscribes some innocent conduct; a legislature may include a reasonable margin of safety to insure effective enforcement of the dangerous activity.[70]

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[69] *Sproles* v. *Binford*, 286 U.S. at 388.

[70] *See, e.g., Village of Euclid* v. *Ambler Realty Co.*, 272 U.S. 365, 388-89 (1926); *Hebe Co.* v. *Shaw*, 248 U.S. 297, 303 (1919).

The rationale of Justice Holmes best establishes the concept of reasoning that supports Wisconsin's length and vehicle combination restrictions:

> When a legal distinction is determined, as no one doubts that it may be, between night and day, childhood and maturity, or any other extremes, a point has to be fixed or a line has to be drawn, or gradually picked out by successive decisions, to mark where the change takes place. Looked at by itself without regard to the necessity behind it the line or point seems arbitrary. It might as well or nearly as well be a little more to one side or the other. But when it is seen that a line or point there must be, and that there is no mathematical or logical way of fixing it precisely, the decision of the Legislature must be accepted unless we can say that it is very wide of any reasonable mark.[71]

CONCLUSION

For the reasons set forth in this Brief, the Commonwealth of Virginia requests this Court to affirm the District Court's decision. Wisconsin's statutory and regulatory scheme concerning trucks and the consequent prohibition of twin trailers is the exercise of sound legislative judgment in an area of peculiar local concern. There is no discrimination, no preemption, and the laws and regulations in question are

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[71] *Louisville Gas & Electric Co.* v. *Coleman*, 277 U.S. 32, 41 (1928) (dissenting opinion), *quoted with approval in Village of Belle Terre* v. *Boraas*, 416 U.S. 1, 8 n. 51 (1974).

reasonable, directed toward, and accomplish their objective in a rational manner.

Respectfully submitted,

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APPENDIX

Article I, Section 8, Clause 3 of the United States Constitution

"Section 8, The Congress shall have power . . . To regulate commerce . . . among the several states. . . ."

Amendment X of the United States Constitution

"The powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people."

Amendment XIV, Section 1 of the United States Constitution

"No state shall . . . deny to any person within its jurisdiction the equal protection of the laws."

Section 114(a) of Title 23 of the United States Code

"§ 114. Construction

(a) The construction of any highways or portions of highways located on a Federal-aid system shall be undertaken by the respective State highway departments or under their direct supervision. Except as provided in section 117 of this title, such construction shall be subject to the inspection and approval of the Secretary. The construction work and labor in each State shall be performed under the direct supervision of the State highway department and in accordance with the laws of that State and applicable Federal laws. Construction may be begun as soon as funds are available for expenditure pursuant to subsection (a) of section 118 of this title. After July 1, 1973, the State highway department shall not erect on any project where actual construction is in progress and visible to highway users any informational signs other than official traffic control devices conforming with standards developed by the Secretary of Transportation."

Section 116(a) of Title 23 of the United States Code

"§ 116. Maintenance

(a) It shall be the duty of the State highway department to maintain, or cause to be maintained, any project constructed under the provisions of this chapter or constructed under the provisions of prior Acts. The State's obligation to the United States to maintain any such project shall cease when it no longer constitutes a part of a Federal-aid system."

Section 145 of Title 23 of the United States Code

"§ 145. Federal-State relationship

The authorization of the appropriation of Federal funds or their availability for expenditure under this chapter shall in no way infringe on the sovereign rights of the States to determine which projects shall be federally financed. The provisions of this chapter provide for a federally assisted State program."

Section 46.1-330, Code of Virginia (1950), as amended

"§ 46.1-330. Length of vehicles; generally; special permits; buses with safety bumpers.—No motor vehicle exceeding a length of forty feet shall be operated upon a highway of this State. The actual length of any combination of vehicles coupled together including any load thereon shall not exceed a total of fifty-five feet; and no tolerance shall be allowed that exceeds twelve inches. Provided, however, that the State Highway and Transportation Commission when good cause is shown, may issue a special permit for combinations in excess of fifty-five feet including any load thereon where the object or objects to be carried cannot be moved otherwise; and passenger buses in excess of

thirty-five feet, but not exceeding forty feet, may be operated on the streets of incorporated cities and towns when authorized pursuant to § 46.1-180; and provided further, that vehicles designed and used exclusively for the transportation of motor vehicles may have an additional load overhang not to exceed five feet; and provided further, that passenger buses may exceed the forty-foot limitation when such excess length is caused by the projection of a front safety bumper or a rear safety bumper or both. Such safety bumper shall not cause the length of the bus to exceed the maximum legal limit by more than one foot in the front and one foot in the rear. "Safety bumper" means any device which may be fitted on an existing bumper or which replaces the bumper and is so constructed, treated or manufactured so it absorbs energy upon impact."

Section 46.1-335, Code of Virginia (1950), as amended

"§ 46.1-335. Vehicles having more than one trailer, etc., attached thereto.—No motor vehicle shall be driven upon a highway drawing or having attached thereto more than one motor vehicle, trailer or semitrailer unless such vehicle is being operated under a special permit from the State Highway Commission, but this limitation shall not apply between sunrise and sunset to such farm trailers or semitrailers being moved from one farm to another farm owned or operated by the same person within a radius of ten miles, provided that this limitation shall not apply to a combination of vehicles coupled together by a saddle mount device used to transport motor vehicles in a driveaway service from factory to dealer when not more than two saddle mounts are used or when three saddle mounts are used not exceeding sixty feet in length when such motor vehicle is being operated on the interstate system of

highways or is enroute from its point of departure to the interstate system of highways, and such use is in conformity with safety regulations adopted by the Superintendent of State Police; provided, further, however, that in the cities of this Commonwealth, the councils may, in their discretion, by general ordinance, permit motor vehicles to be driven upon streets of their respective cities drawing or having attached thereto more than one other vehicle, trailer or semitrailer."

Pertinent Text of Wisconsin Statutes (1975)

"**348.05 Width of vehicles.** (1) No person without a permit therefor, shall operate on a highway any vehicle having a total width in excess of 8 feet, except as otherwise provided in this section.

(2) The following vehicles may be operated without a permit for excessive width if the total outside width does not exceed the indicated limitation:

. . . .

(k) 9 feet for loads of tie logs, tie slabs and veneer logs, provided that no part of the load shall extend more than 6 inches beyond the fender line on the left side of the vehicle or extend more than 10 inches beyond the fender line on the right side of the vehicle. The term "fender line" as used herein means as defined in s. 348.09. This paragraph shall not be applicable to transport on highways designated as parts of the national system of interstate and defense highways pursuant to s. 84.29. The exemptions provided by this paragraph shall apply only to single and tandem axle trucks.

(l) Ten feet for loads of hay in bales from the point of production to drying or milling plants or farms if the size

of the bales is not more than 5 feet in length and not more than 6 feet in diameter. This paragraph shall not be applicable to transport on highways designated as parts of the national system of interstate and defense highways under § 84.29.

"**348.06 Height of vehicles.** (1) No person, without a permit therefor, shall operate on a highway any motor vehicle, mobile home, trailer or semitrailer having an over-all height in excess of 13½ feet, except as otherwise provided in sub. (2).

(2) The following vehicles may be operated without a permit for excessive height if the over-all height does not exceed the indicated limitations:

(a) No limitation for implements of husbandry temporarily operated upon a highway;

. . . .

"**348.07 Length of vehicles.** (1) No person, without a permit therefor, shall operate on a highway any single vehicle with an over-all length in excess of 35 feet or any combination of 2 vehicles with an over-all length in excess of 55 feet, except as otherwise provided in subs. (2) and (2a).

(2) The following vehicles may be operated without a permit for excessive length if the over-all length does not exceed the indicated limitations:

. . . .

(d) 60 feet for a combination of mobile home and towing vehicle, except that no mobile home and towing vehicle having a combined length in excess of 50 feet shall be operated during the hours of 12 m. to 12 p.m. on Sundays,

New Year's, Memorial, Independence, Labor, Thanksgiving and Christmas days;

(e) No limitation for implements of husbandry temporarily operated upon a highway;

. . . .

"**348.08 Vehicle trains.** (1) No person, without a permit therefor shall operate on a highway any motor vehicle drawing or having attached thereto more than one vehicle. . . .

"**348.15 Weight limitations on class "A" highways.** (1) In this section:

. . . .

(3) For enforcement purposes only and in recognition of the possibility of increased weight on a particular wheel or axle or group of axles due to practical operating problems, including but not limited to accumulation of snow, ice, mud or dirt, the use of tire chains or minor shifting of load, no summons or complaint shall be issued, served or enforced under sub. (2) unless:

. . . .

(d) The gross weight imposed on the highway by all axles of a vehicle or combination of vehicles exceeds 73,000 pounds.

"**348.175 Seasonal operation of vehicles hauling peeled or unpeeled forest products cut crosswise.** The transportation of peeled or unpeeled forest products cut crosswise in excess of gross weight limitations under s. 348.15 shall be permitted during the winter months when the highways are so frozen that no damage may result thereto by reason of such transportation. If at any time any person is so

transporting such products upon a class "A" highway in such frozen condition then he may likewise use a class "B" highway without other limitation, except that chains and other traction devices are prohibited on class "A" highways but such chains and devices may be used in cases of necessity. . . .

"**348.25 General provisions relating to permits for vehicles and loads of excessive size and weight.**

. . . .

(3) The highway commission shall prescribe forms for applications for all single trip permits the granting of which is authorized by s. 348.26 and for those annual or multiple trip permits the granting of which is authorized by s. 348.27(2) and (4) to (7m). The commission may impose such reasonable conditions prerequisite to the granting of any permit authorized by s. 348.26 or 348.27 and adopt such reasonable rules for the operation of a permittee thereunder as it deems necessary for the safety of travel and protection of the highways. Local officials granting permits may impose such additional reasonable conditions as they deem necessary in view of local conditions.

(4) Except as provided under s. 348.27 (7m), permits shall be issued only for the transporting of a single article or vehicle which exceeds statutory size, weight or load limitations and which cannot reasonably be divided or reduced to comply with statutory size, weight or load limitation. . . .

"**348.26 Single trip permits**. . . .

(4) MOBILE HOME PERMITS. Single trip permits for the movement of oversize mobile homes may be issued only by the highway commission, regardless of the highways to be

used. Every such permit shall designate the route to be used by the permittee and shall authorize use of the highways only between sunrise and sunset on days other than Saturdays, Sundays and holidays.

"348.27 Annual or multiple trip permits. . . .

(4) INDUSTRIAL INTERPLANT PERMITS. The highway commission may issue, to industries and to their agent motor carriers owning and operating oversize vehicles in connection with interplant, and from plant to state line, operations in this state, annual permits for the operation of such vehicles over designated routes, provided that such permit shall not be issued under this section to agent motor carriers or from plant to state line for vehicles or loads of width exceeding 96 inches upon routes of the national system of interstate and defense highways. If the routes desired to be used by the applicant involve city or village streets or county or town highways, the application shall be accompanied by a written statement of route approval by the officer in charge of maintenance of the highway in question. A separate permit is required for each oversize vehicle to be operated.

(5) POLE, PIPE AND VEHICLE TRANSPORTATION PERMITS. Except as further provided in this subsection, the highway commission may issue an annual permit to pipeline companies or operators or public service corporations for transportation of poles, pipe, girders and similar materials and to companies and individuals hauling peeled or unpeeled pole-length forest products used in its business and to auto carriers operating "haulaways" specially constructed to transport motor vehicles and which exceed the maximum limitations on length of vehicle and load imposed by this chapter. Such permits issued to auto carriers and to companies and individuals hauling peeled or unpeeled pole-length forest products shall limit the length of vehicle and load to a maximum of 10 feet in excess of the limitations in s. 348.07(1) and shall be valid only on a class "A" highway as defined in s. 348.15(1) (b). Permits issued to companies or individuals hauling pole-length forest products may not exempt such companies or individuals from the maximum limitations on vehicle load imposed by this chapter.

. . . .

(7) MOBILE HOME PERMITS. The highway commission may issue annual statewide permits to licensed mobile home transport companies and to licensed mobile home manufacturers and dealers authorizing them to transport oversize mobile homes over any of the highways of the state in the ordinary course of their business. Every such permit shall authorize use of the highways only between sunrise and sunset on days other than Saturdays, Sundays and holidays.

. . . .

(8) EMERGENCY ENERGY CONSERVATION PERMITS. During an energy emergency, the highway commission may waive the divisible load limitation of s. 348.25(4) and issue permits valid for a period not to exceed 30 days for overweight vehicles carrying energy resources or fuel or milk commodities designated by the governor or his designee, regardless of the highways involved, to conserve energy. Such permits may only allow weights not more than 10% greater than the gross axle and axle combination weight limitations, and not more than 15% greater than the gross vehicle weight limitations under ss. 348.15 and 348.16. No permit issued under this subsection is valid unless the overweight vehicle is registered under ch. 341 for the maximum gross weight allowed by the permit and the department of transportation

has been paid a permit fee of $10 per 1,000 pounds or fraction thereof for the amount by which such maximum gross weight exceeds 73,000 pounds. Nothing in this subsection shall be construed to permit the highway commission to waive the requirements of s. 348.07."